

)	
IN THE MATTER OF:)	
)	
Dillard and Lena Covington)	
KC Weaver Road UAD)	Order No. 18 -XXX -SW
McIntosh, Washington County, Alabama)	
)	

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated thereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following findings of fact:

1. Dillard Covington and Lena Covington (hereinafter “Mr. Covington and Ms. Covington”) are responsible for the creation of an unauthorized solid waste dump (hereinafter “UAD”) and are the owners of property located on KC Weaver Road in McIntosh, Washington County, Alabama, and better described as parcel number 65 37 02 04 0 000 007.000 00, which is the subject of this Administrative Order.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.
4. Ala. Code §22-27-2(37), as amended, and ADEM Admin. Code r. 335-13-1-.03 (139) define an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b), as amended, states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b), as amended, states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1)(a) prohibits unauthorized dumps.

8. On June 26, 2017, Department personnel conducted an inspection and documented the existence of an UAD located on KC Weaver Road in McIntosh, Washington County, Alabama within parcel 65 37 02 04 0 000 007.000 00. Property ownership was determined by a review of Washington County records. The UAD consisted of construction and demolition and household wastes. The Department has determined that Mr. Covington and Ms. Covington are responsible for the creation of the UAD.

9. On July 13, 2017, the Department issued a Notice of Deficiency (hereinafter “NOD”) to Mr. Covington and Ms. Covington.

10. The Department did not receive a response to the July 13, 2017, NOD.

11. On August 28, 2017, the Department issued a Notice of Violation (hereinafter “NOV”) to Mr. Covington and Ms. Covington requiring abatement and closure of the UAD, and the submittal of associated documentation.

12. The Department has not received a response to the August 28, 2017, NOV.

13. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person’s efforts to minimize or mitigate the effects of such violation upon the environment; such person’s history of previous violations; and the

ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Mr. Covington and Ms. Covington did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Mr. Covington and Ms. Covington failed to abide by applicable solid waste requirements and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Covington and Ms. Covington have realized a significant economic benefit as a result of the violations listed above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Mr. Covington and Ms. Covington to mitigate any potential effects upon the environment and human health that may have been caused as a result of the unauthorized solid waste dump.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Covington and Ms. Covington do not have a documented history of violations of the applicable requirements of ADEM Admin. Code div. 335-13.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating that Mr. Covington and Ms. Covington are unable to pay the civil penalty.

G. OTHER FACTORS: The Department has also considered the penalty range imposed for similar violations at other UADs.

Violation Type

Penalty Range for Violation Type

Unauthorized Solid Waste Dump

\$0 - \$25,000

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000 is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's Findings).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days of receipt of this Order, Mr. Covington and Ms. Covington shall pay to the Department a civil penalty in the amount of \$5,000 for the violation cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Covington's and Ms. Covington's names and address and the ADEM Administrative Order number of this action.

B. That, immediately upon receipt of this Order and continuing each and every day thereafter, Mr. Covington and Ms. Covington shall cease and desist from operating an UAD.

C. That, within thirty days of receipt of this Order, Mr. Covington and Ms. Covington shall submit a site closure plan to the Department in accordance with ADEM Admin. Code div. 335-13-1-.13(2)(b)1. This plan shall include a schedule for site closure completion. Mr. Covington and Ms. Covington shall implement the site closure plan and remove the wastes onsite to an approved landfill unit.

D. That, within thirty days of completion of remediation activities, Mr. Covington and Ms. Covington shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before and after remediation.
6. Documentation that the site was properly closed to prevent erosion.
7. Documentation that the site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Covington and Ms. Covington for the violation cited herein.

G. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Covington and

Ms. Covington for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2017.

Lance R. LeFleur
Director

Attachment A

Dillard and Lena Covington
Unauthorized Solid Waste Dump (KC Weaver Road)
McIntosh, Washington County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an UAD	1	\$4,000	\$1,000	\$0	
TOTAL PER FACTOR		\$4,000	\$1,000	\$0	\$5,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-)	\$0

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000

Footnotes

** See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.*

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Stephen A. Cobb, hereby certify that I have this date served the foregoing Administrative Order upon the person listed below by USPS Certified Mail, properly addressed and postage prepaid to:

**Dillard and Lena Covington
KC Weaver Road UAD
McIntosh, Washington County, Alabama**

Done this _____ day of _____, 2018.

Stephen A. Cobb